

Editor's note: appealed -- aff'd, sub nom. Western Reserves Oil Co. v. Watt, Civ.No. 82-76-04 (D.Mont. Oct. 17, 1983)

BILL MATHIS ET AL.

IBLA 82-132

Decided January 15, 1982

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 46679.

Reversed.

1. Oil and Gas Leases: First-Qualified Applicant--Oil and Gas Leases:
Non-competitive Leases

Under 43 CFR 3103.3-4, a partnership offering to lease must submit "with its offer" a current statement of qualifications to hold a Federal oil and gas lease. If the partnership opts to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting a statement for each lease offer, the statement on file must be kept current by the offeror or else the serial number assigned to the statement for reference "shall not be used," according to 43 CFR 3102.2-1(c). BLM acts contrary to regulation when it allows a partnership that has made an over-the-counter offer to submit its updated statement of qualifications after the date of filing of the offer, where another offer of prima facie validity had intervened.

APPEARANCES: Bill Mathis for the appellants; S. B. Christy IV, Esq., Roswell, New Mexico, for appellee Western Reserve Oil Company.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bill Mathis, J. L. Davis, and Joyce H. Gillis appeal the October 14, 1981, decision of the Montana State Office of the Bureau

of Land Management (BLM), which rejected appellants' "over-the-counter" oil and gas lease offer M 46679, filed June 23, 1980. The BLM decision stated that appellants' offer was rejected because another oil and gas lease offer for the same land "had priority in time of filing." That other lease, M 47883, whose offer was also filed June 23, 1980, was issued October 1, 1981, to Western Reserves Oil Company (Western). Appellants contend that Western "was not qualified on June 23, 1980," to hold a Federal oil and gas lease because Western had not timely filed with BLM a current statement of its qualifications to hold a Federal oil and gas lease.

The New Mexico State Office, BLM, had originally accepted, on January 2, 1968, Western's statement of qualifications. On February 2, 1981, the New Mexico State Office received a request from the Montana State Office, BLM, for information regarding Western's compliance with the regulations concerning statements of qualifications. Thereupon, on February 11, 1981, the New Mexico State Office notified Western that, pursuant to the regulations in effect on and after June 16, 1980, Western must update its statement. Western responded to that request in April and the effective date of acceptance of the update by the chief of the oil and gas section of the New Mexico State Office was May 5, 1981. Acknowledgment of this acceptance ^{1/} was then transmitted to the Montana State Office and the lease issued.

Appellants refer to a letter from R. M. Moran to the New Mexico State Office, dated March 30, 1981, which states in part:

Western Reserves Oil Company, a limited partnership organized and existing under the laws of the State of Texas, was formed July 28, 1966 * * *.

At the time of formation, the sole general partner of Western Reserves Oil Company was Richard C. Beveridge, who is still the sole general partner.

At the time of formation of Western * * * the limited partners were R. M. Moran and Moran Oil Producing and Drilling Corporation. Subsequent to formation of the partnership, R. M. Moran conveyed all of his interest in said partnership to Turnkey, which became a limited partner in said partnership. Thereafter, Turnkey and Moran Oil Producing and Drilling Corporation were, by Merger Agreement, merged into Moranco, a New Mexico corporation, which is the present sole limited partner of Western Reserves Oil Company.

^{1/} Upon acceptance of the updated statement, the New Mexico State Office assigned it a new serial number for future reference, NM 43000.

Appellants assert that the regulation allowing an entity to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting the statement for each lease offer or application, specifically provides that amendments to the statement "shall be filed promptly and the [statement's] serial number shall not be used if the statement on file is not current." 43 CFR 3102.2-1(c). Appellants point to the third paragraph of the quoted Moran letter as indicating "the numerous and substantial changes in the ownership of Western" which had gone unreported until several months after the June 23, 1980, filing of the oil and gas lease offer by Western. Therefore, according to appellants' unstated but clear position, Western has failed to comply with the applicable regulations and therefore should not have been issued the instant oil and gas lease.

As a partnership, Western was obligated to comply specifically with 43 CFR 3102.2-4:

§ 3102.2-4 Associations including partnerships.

(a) An association which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title:

(1) A certified copy of its articles of association or partnership;

(2) A statement that it is authorized to hold oil and gas leases; and

(3) A complete list of all general partners or members together with a statement as to their citizenship and identifying those authorized to act on behalf of the association or partnership in matters relating to Federal oil and gas leasing.

(b) A separate statement from each person owning or controlling more than 10 percent of the association, setting forth citizenship and compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title, shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title.

As we said in Stephen A. Pitt, 57 IBLA 365, 367 (1981): 2/

2/ The quoted language from the cited case is apropos even though it involved a simultaneous oil and gas lease application rather than an over-the-counter offer, as in the instant case.

The purpose of requiring applicant partnerships to disclose the identities of their partners is to prevent unqualified "blind" partners from shielding illegal participation in oil and gas leasing by associating with qualified persons. Compare Estate of Glenn F. Coy, 52 IBLA 182, 188-91, 88 I.D. 236, 239-40 (1981). Only by requiring full disclosure of the identities of all partners, on pain of disqualification, can the integrity of the leasing system be maintained by preventing illegal participation.

We also stated, "The regulation clearly requires that the information be submitted with the partnership's application. Giving unqualified entrants such as appellants additional time to cure their applications by waiving mandatory requirements would illegally infringe on the rights of the second-drawn qualified entrants." [Citations omitted.] Id. at 368.

[1] On the basis of the language of 43 CFR 3102.2-1(c), that "the serial number shall not be used if the statement on file is not current," and of Western's failure to submit a current statement of qualifications "with its offer," as required by 43 CFR 3102.2-4, we hold that Western was not in full compliance with applicable regulations and was therefore not qualified, on June 23, 1980, to hold a Federal oil and gas lease. Western asserts that the statement of qualifications may be submitted at some point after 3/ the date of submission of the offer. However, we did recently state that a late submission of a statement similar to Western's could be accepted and used by BLM, but that priority of the lease offer must be recognized only as of the date the current, complete statement was duly filed. There is no relation back, Horn Silver Mines Co., 60 IBLA 107 (1981). Therefore, Western's date of priority is in April 1981, whereas appellants' priority for the lease is as of June 23, 1980.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision

3/ Western notes that its updating of its statement was completed within the time allowed therefor by the New Mexico State Office and that the statement was accepted before issuance of the lease. Western also asserts that the critical point for compliance with the requirements relating to the filing of a statement is that of "the adjudication of the issuance of the lease." Western cites 43 CFR 3112.6-1(b) as authority for this proposition; however, we need not consider the substantive validity of that argument because that regulation clearly applies to simultaneous filings only. None of these temporal reference points posited by Western is decisive in view of the regulations noted in the text of the opinion. Of course, our decision does not affect the special filing period of 43 CFR 3102.2-4(b).

appealed from is reversed and the case remanded to BLM for appropriate action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

